

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE**

UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, CARPENTERS
LOCAL UNION No. 897
(M&H Enterprises, Inc. d/b/a
Martin-Harris Construction)

and

Case 28-CB-5791

THOMAS D. PATRICK, An Individual

Stephen Wamser, Esq.,
of Las Vegas, Nevada,
for the General Counsel.

Thomas D. Patrick,
of Las Vegas, Nevada, pro se.

Daniel M. Shanley, Esq.,
of Los Angeles, California,
for the Respondent.

DECISION

Statement of the Case

JAMES L. ROSE, Administrative Law Judge: This matter was tried before me at Las Vegas, Nevada, on May 6, 2003, upon the General Counsel's complaint which alleged that the Respondent unlawfully refused to refer the Charging Party for employment in violation of Section 8(b)(1)(A) of the National Labor Relations Act, as amended, 29 U.S.C. §151, *et seq.* The Complaint also alleged that the Respondent violated Section 8(b)(2) of the Act. Since the backpay period was finite, the General Counsel issued a Compliance Specification to be heard with the Complaint. The Respondent generally denied that it committed any violations of the Act.

Early in the proceeding, Counsel for the Respondent called for production of documents he had subpoenaed from Thomas Patrick, the Charging Party. Patrick stated that he was unaware of the subpoena and did not have the documents. The subpoena was served by certified mail and signed for at the address Patrick gives as the place he receives mail. It is a box at a United Parcel Store. Patrick stated that he had not checked his mail for 10 days.

Though no motion to quash was filed, Counsel for General Counsel argued that the documents sought related to other actions by the Charging Party. Counsel for the Respondent argued that such documents might contain inconsistent assertions by the Charging Party. I ruled that a general proposition, the Respondent was entitled to subpoena documents from the Charging Party. Patrick was excused to retrieve the documents, which he stated would take about 30 minutes, a process to which he did not object.

Counsel for the General Counsel then called two witnesses and the hearing was in recess pending the return of Patrick. After some time had elapsed, Counsel for the General Counsel reported that Patrick had called and talked to Counsel's secretary, telling her that he was going to work, that he was not returning to the hearing as "he wanted no part of the fraud that was happening in the courtroom."

Counsel for the Respondent moved to have this matter dismissed, subsequently joined in by Counsel for the General Counsel. After hearing testimony for the Counsel for the General Counsel's secretary, and representations by Counsel for the General Counsel that Patrick's recall of certain critical facts seemed unreliable, I announced that I would dismiss the complaint and would issue a decision accordingly so that the Charging Party would have a clear avenue for appeal, if he felt so inclined.

Accordingly, upon the record as a whole,¹ I hereby issue the following findings of fact, conclusions of law and recommended order:

I. JURISDICTION

M&H Enterprises, Inc. d/b/a Martin-Harris Construction (herein the Employer) is a Nevada corporation engaged in the construction industry at Las Vegas as a general contractor. In the course and conduct of this business, the Employer annually purchases and receives goods, products and materials directly from points outside the State of Nevada valued in excess of \$50,000. The Respondent admits, and I conclude, that the Employer is an employer engaged in interstate commerce within the meaning of Sections 2(2), 2(6) and 2(7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent, United Brotherhood of Carpenters and Joiners of America, Carpenters Local Union No. 897 is admitted to be a labor organization within the meaning of Section 2(5) of the Act.

III. ANALYSIS AND CONCLUSIONS

Before ruling on the Respondent's motion to dismiss due to the Charging Party's refusal to return and participate in the hearing, I asked that the General Counsel give Counsel's secretary permission to testify. Permission was granted and she testified that shortly after 10 a.m., she received a call on Counsel's line:

¹The transcript at page 9, line 8 is corrected to read "Charging Party" instead of "Respondent."

5 I answered the phone and said Steve Wamser's office. There was gentleman on the other line, and he stated that he was Thomas Patrick, and that he was going back to work, I replied okay. And then he said that he was not coming back to the trial, and I said okay. And he said that he wanted no part of the fraud that was happening in that courtroom, and I said okay. And I asked him at that point if would like to speak to you about that, and he stated that if he wanted to talk to you (Wamser) he would have you summoned.

10 In moving that this Complaint be withdrawn or dismissed, Counsel for the General Counsel also represented that in preparing Patrick on the morning of the hearing, Patrick was unable to recall critical facts in support of paragraph 6 [the Section 8(b)(2) allegation]. Counsel further represented that the Complaint was issued solely on the testimony of Patrick and without his participation, the General Counsel would be unable to proceed.

15 While I am mindful that the policy of the Act is vindicate public and not private rights, the absence of the only substantive witness in support of the complaint allegations renders continuing with this matter pointless and futile. Given Patrick's refusal to participate in this proceeding, and Counsel's representation that he would not have been able to testify credibly concerning the Section 8(b)(2) allegation I concluded that it would best effectuate the
20 purposes and policies of the Act to dismiss the Complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended ²

25 **ORDER**

The Complaint is dismissed in its entirety.

30 Dated at San Francisco, California, May 29, 2003.

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James L. Rose
Administrative Law Judge

²If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.